go for lunch on previous occasions, it did not follow that there was implied consent on this occasion for Chua to go in the car for lunch. The moment Chua changed his mind and decided to go for lunch instead of returning the car to Ah Bah, he was not using it for the purpose for which the car was entrusted to him. On the journey to the Queen Street market for lunch, the car was being driven by Chua without the permission of the owner. The driver of the car at the time of the accident was not an authorised driver within the scope and terms of the policy and the plaintiff's claim must therefore fail.

There was no evidence that Ah Bah gave express permission for the car to be used by Chua for going to lunch and the question before the court, therefore, was whether or not in the circumstances it must be held that he gave implied permission.

A number of cases were cited in argument: *Yong Moi & Anor.* v. *Asia Insurance Co., Ltd.*;[3] *Official Assignee* v. *China Insurance Co., Ltd.*;[4] *Miller* v. *Liverpool Co-operative Society Ltd.*[5] and *Ormrod* v. *Crossville Motor Services Ltd.*[6] I find it unnecessary to deal with all these cases, because the principle involved has been clearly stated by Tan Ah Tah J. (as he then was) in *Yong Moi & Anor.* v. *Asia Insurance Co., Ltd.*[7] at page 331:

"It is probably impossible to state in comprehensive terms any principle which will enable it to be determined in every case whether implied permission has been given to the third person to drive the car. The determination of that question depends upon the view that is taken of the matter after consideration of the circumstances of each case."

On the evidence before me, I was of the opinion that having regard to the fact that on previous occasions when the car was sent to Chua for repairs, he had used it for going to lunch and to the fact that Ah Bah had raised no objection on previous occasions when informed that his car had been used for going to lunch, the inference seemed irresistible that there was an implied consent to the car being used by Chua for going to lunch on the day in question. I therefore held that at the time of the accident the car was being driven by Chua with the policy holder's permission and Chua was therefore under the terms of the policy issued to Yew Seng & Co. entitled to be indemnified by the defendants in respect of the judgment and costs obtained against him by the plaintiff.

In the circumstances I ordered that judgment be entered against the defendants in the sum of $4,076.30 and costs to be taxed.

Judgment against the defendants.

Solicitors: *Battenberg & Talma; Lee & Lee.*

ISAHAK HAMID v. MUSTAPHA

[Election Petition (Ismail Khan J.) January 16, 1965]

[K.L. — Election Petition No. 8 of 1964]

Election Petition — Stamp on statutory declaration delivered with nomination paper not cancelled — Inadmissibility of statutory declaration — Non-compliance with provisions of regulations — Whether such non compliance affected result of election — Election Offences Ordinance, 1954, s. 32(b) — Elections (Conduct of Elections) Regulations, 1959, regs. 4(3), 6(2) and 7(5).

Election — Improper rejection of nomination and improper acceptance of nomination — Distinction between.

Stamp Ordinance, 1949, ss. 7(3), 7(5) and 52 — Stamp on document not cancelled — Document deemed to be unstamped and inadmissible in evidence.

This was an election petition in which it was prayed that it be determined that the respondent was not duly elected as a member for the Parliamentary Constituency of Tanah Merah, Kelantan to the Dewan Ra'ayat. The main ground for the petition was that the statutory declaration submitted by the respondent with his nomination papers was invalid as the stamp on it had not been cancelled in the prescribed manner and therefore the returning officer was wrong in accepting the nomination papers of the respondent.

Held: (1) as the stamp on the statutory declaration had not been cancelled in the prescribed manner the statutory declaration must be deemed to be unstamped and therefore inadmissible in evidence and could not be acted on for any purpose;

(2) as there was no valid statutory declaration, the returning officer should have rejected the respondent's nomination papers and as this was not done in this case there was a non-compliance with the provisions of the regulations relating to elections;

(3) despite the transgression of the law by the returning officer the election in this case had substantially been conducted in accordance with the principles of the law and therefore as the non-compliance of the law by the returning officer had not affected the result of the election, the respondent must be held to have been duly elected and the petition must be dismissed.

Cases referred to:—

(1) *Rathi* v. *Caramalli Fazal* (1890), I.L.R. 14 Bom. 102.

(2) *Warrington Case* (1869) 1 O'Mally & Hardcastle 44.

(3) *Hackney Case, Gill* v. *Reed and Holms* (1874), 39 J.P. 151; 2 O'Mally & Hardcastle 77.

(4) *Islington West Case* (1901), 17 T.L.R. 210.

(5) *Woodward & Sarsons* L.R. 10 C.P. 743-745.

(6) *Haverfordwest Case* (1874), L.R. 9 C.P. 720.

ELECTION PETITION.

S. E. Teh for the petitioner.

Wan Mustapha for the respondent.

Cur. Adv. Vult.

Ismail Khan J.: An election was held on the 25th April, 1964, to elect a member for the Parliamentary Constituency of Tanah Merah to the Dewan Ra'ayat. The petitioner and the respondent were the only candidates. The respondent was returned by a majority of votes. The petitioner now prays that it may be deter-

mined that the respondent was not duly elected and that he, the petitioner, should have been returned.

The ground for this petition is that the returning officer was wrong in accepting the nomination papers of the respondent as the document P1 which purported to be a statutory declaration of the respondent's qualification for election and which was submitted with his nomination papers was invalid. It is alleged in the petition that the stamp on P1 had not been cancelled in the prescribed manner, and the returning officer's decision in acting on it was therefore in contravention of regulation 4(3) of the Elections (Conduct of Elections) Regulations, 1959, framed under section 16 of the Elections Ordinance, 1958, (hereinafter called "the Regulations"). The petition also alleges that as a result the respondent was allowed to go to the poll and the petitioner was deprived of his right to be returned uncontested.

Regulation 4(3) reads as follows:—

"Every candidate shall at the time of his nomination and in the manner described in regulation 6(2) of these Regulations deliver to the returning officer a statutory declaration of his qualifications made and subscribed by the candidate as set out in Form 4 in the First Schedule to these Regulations. If such statutory declaration is not delivered as aforesaid, the nomination of such candidate shall be deemed to be void and the nomination papers shall not be accepted by the returning officer."

Regulation 6(2) reads as follows:—

"Three copies of every nomination paper must be delivered in person to the returning officer between the hours of ten o'clock in the forenoon and twelve noon by the candidate or by his proposer or seconder together with the statutory declaration required under paragraph (3) of regulation 4 of these Regulations, and if not so delivered, shall be rejected."

Mr. Wan Mustapha for the respondent took the preliminary point that under regulation 7(5) the decision of the returning officer is final and could not be called in question in a court of law. I ruled against him as under the proviso to regulation 7(5) the returning officer's decision can be challenged in an election petition by an aggrieved party on the grounds set out in section 32(b) of the Election Offences Ordinance, 1954, which reads:—

"(b) non-compliance with the provisions of any written law relating to any election, if it appears that the election was not conducted in accordance with the principles laid down in such written law and that such non-compliance affected the result of the election."

It is clear that the ground stated in the petition for the relief claimed brings it within the ambit of section 32(b) of the Ordinance. To succeed, however, the petitioner has to establish that not only was there a non-compliance with the provisions of the section, but that because of such non-compliance the election was not conducted according to the principles of such election law and further that such non-compliance has affected the result of the election.

The facts of the case which are not in dispute are as follows. On the nomination day — the 21st March, 1964 — both the petitioner and the respondent delivered to the returning officer their nomination papers within the prescribed period. During the time allowed for objections the petitioner objected to the respondent's nomination papers and submitted his objection in writing — P2. The returning officer found that P1, the respondent's statutory declaration, bore the necessary stamp which had, however, not been cancelled. Nevertheless, he decided to act on it and accepted the respondent's nomination.

The relevant sections of the Stamp Ordinance, 1949, are sections 7(3) as amended, 7(5) and 52.

Section 7(3) reads:—

"Stamps used for any of the instruments described under any of the articles in the First Schedule .... shall .... be cancelled as follows: The instrument, or the paper on which it is proposed to be written, shall be taken to the office of the Collector and the stamp shall there be cancelled by having the words "Stamp Office" with the name of the district and the date written or printed partly on the stamp and partly on the paper to which the stamp is affixed."

Section 7(5) reads:—

"Any instrument bearing a stamp which has not been so cancelled in the manner prescribed in this section that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped."

Section 52 reads:—

"No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered, or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that—

(a) any such instrument shall, subject to all just exceptions, be admitted in evidence on payment of the duty and the penalty, if any, chargeable in respect thereof under the provisions of section 43 or section 47 of this Ordinance;

(b) .....

(c) ....."

Section 43 has no application here. Section 47 provides for late stamping on payment of the necessary duty and penalty.

P1 comes with Schedule 1. It is clear that the stamp affixed thereto not having been cancelled in the prescribed manner it must be deemed to be unstamped and is therefore inadmissible in evidence and cannot be acted on for any purpose. It is not enough to say, as Mr. Wan Mustapha sought to urge before me, that P1 bore an indorsement that the $1 payable

thereon had been credited to revenue. The point is whether the stamp had been cancelled in such a way that in the words of section 7(5) "it cannot be used again". The proviso (a) to section 52 cannot be invoked in this case as there is no evidence that at the time the petitioner made his objection to P1 the respondent had paid the duty or penalty or had even given any undertaking in respect of such payment.

If any authority is needed, I need only refer to the case of *Rathi* v. *Caramalli Fazal.*[1] The plaintiffs sought to recover damages from the defendant for breach of two contracts and tendered two notes or memoranda of the contracts. Each of the two notes had been stamped but the stamp on one had not been cancelled at all and the mark on the other was without any mark cancellation except a small part of the first letter of the defendant's signature consisting of a curved line. It was held that the notes were inadmissible and could not be acted upon having regard to sections 11 and 34 of the Indian Stamp Act, 1879, (now sections 12 and 35 of the Indian Stamp Act). These contain, except for some slight differences, provisions similar to section 7(5) and section 52 of our Ordinance respectively.

Under regulation 4(3) the respondent had to deliver his statutory declaration along with his nomination papers to the returning officer. Such a statutory declaration must be one that could be acted upon. P1 did not satisfy this condition. In the circumstances, the position would have been the same if there had been no such statutory declaration. In the absence of such a declaration, the returning officer had no alternative under the said regulation but to reject the respondent's nomination papers. I therefore hold that there has been a non-compliance with the provisions of the regulations relating to elections.

The next question for determination is whether because of such non-compliance it appears that the election was not conducted in accordance with the principles laid down in such regulations. This matter is not free from difficulty and I have given it anxious consideration. I have in mind what was said by Baron Martin in the *Warrington case,*[2] when he referred with approval to the remarks of Mr. Justice Willes "that a judge to upset an election ought to be satisfied beyond all doubt that the election was void and that the return of a member is a serious matter and not lightly to be set aside".

The general principle upon which a petition will succeed by the common law in the case of parliamentary elections was applied in some of the older English cases which are set out in *Schofield's* Parliamentary Elections, 3rd edition, page 507. It received statutory recognition when it was enacted in section 13 of the English Ballot Act, 1872. It was finally re-enacted in section 16(3) of the English Representation of the People Act, 1949, which is as follows:—

> "No parliamentary election shall be declared invalid by reason of any act or omission by the returning officer or any other person in breach of his official duty in connection with the election or otherwise of the parliamentary elections rules if it appears to the tribunal having cognisance of the question that the election was so conducted as to be substantially in accordance with the law as to elections, and that the act or omission did not affect its result."

This section is comparable with section 32(b) of our Ordinance. The English cases are therefore applicable.

In *Hackney case, Gill* v. *Reed and Holms,*[3] a case decided on the provisions of section 13 of the earlier Act, Grove J. said:—

> "If I look to the whole and to the sense of it as a whole it seems to me that the object of the legislature in this provision is to say this — an election is not to be upset for an informality or for a triviality, it is not to be upset because the clerk at one of the polling stations was five minutes too late or because some of the polling papers were not delivered in the proper manner or were not marked in a proper way. The objection must be something substantial, something calculated really to affect the result of the election, I think that is the way of viewing it which is consistent with section 13 of the (1872) Act. So far as it seems to me the reasonable meaning of section 13 is to prevent an election from becoming void by trifling objections on the ground of an informality, because the judge has to look to the substance of the case to see whether the informality is of such a nature as to be fairly calculated in a reasonable mind to produce a substantial effect upon the election."

In the *Islington West case,*[4] at page 230, Kennedy J. observed:—

> "An election ought not to be held void by reason of transgressions of the law committed without any corrupt motive by the returning officer or his subordinates in the conduct of the election where the court is satisfied that the election was notwithstanding those transgressions, an election really and in substance conducted under the existing election law, and that the result of the election, that is, the success of the one candidate over the other was not and could not have been affected by those transgressions. If on the other hand the transgressions of the law by the officials being admitted, the court sees that the effect of the transgressions was such that the election was not really conducted under the existing election laws, or it is open to reasonable doubt whether these transgressions may not have affected the result, and it is uncertain whether the candidate who has been returned has really been elected by the majority of persons voting in accordance with the laws in force relating to elections the court is then bound to declare the election void. It appears to us that this is the view of the law which has generally been recognised and acted upon by the tribunals which have dealt with election matters."

In the case of *Woodward* v. *Sarsons,*[5] it was said:

> "that the question must in like manner be, whether the departure from the prescribed method of election

is so great that the tribunal is satisfied, as matter of fact, that the election was not an election under the existing law. It is not enough to say that great mistakes were made in carrying out the election under those laws: it is necessary to be able to say, that, either wilfully or erroneously, the election was not carried out under those laws, but under some other method. For instance, if, during the time of the old laws, with the consent of a whole constituency, a candidate had been selected by tossing up a coin, or by the result of a horse-race, it might well have been said that the electors had exercised their free will, but it should have been held that they had exercised it under a law of their own invention, and not under the existing election laws, which prescribed an election by voting. So now, when the election is to be an election by ballot, if, either wilfully or erroneously, a whole constituency were to vote, but not by ballot at all, the election would be a free exercise of their will, but it would not be an election by ballot, and therefore not an election under the existing election law."

Applying the above principle, can it be said that the failure of the returning officer to reject the nomination papers of the respondent resulted in a situation where it appears that the election was not conducted in accordance with the principles of the election law? The word "election" to my mind comprises the many steps in the process whereby a candidate is returned from the issuing of a notification calling an election up to the declaration of the results. Nomination of a candidate is only one such step in this process. In this case, it is true that through the returning officer's improper acceptance of the respondent's nomination papers, the respondent was allowed to go to the poll and was elected. But there was a free contest between the respondent and the petitioner with the result that the former polled a majority of votes. No allegation of corrupt motives on the part of any election official or improper practices is made in this case. The petitioner's only complaint is the non-compliance of the returning officer with one of the provisions of the election law, *viz.*, regulation 4(3). It is not suggested that the method of voting was not by ballot or that the majority of the voters had been prevented by corruption, coercion or undue influence or through lack of the necessary facilities from voting freely according to their preference. Nor is any complaint made of a fraudulent counting of votes or a violation of the secrecy of the ballot.

It is true that in the *Haverfordwest case,*[6] an election was held to be void as the returning officer had improperly refused to notice the nomination of one of the only two candidates for an election of a member for a borough to Parliament. There Brett J. said:—

"The determining whether one or two candidates are put for election is a matter which goes so entirely to the substance of the election that what the returning officer did in refusing to take notice of Mr. Davies' nomination vitiates the election."

That is a case of an improper rejection of a nomination, not as it is here the improper acceptance of a nomination. There is an important distinction between the two. In the former the whole constituency was deprived of its right to vote for a candidate who was legally entitled to go to the poll. In the latter the two candidates were put up for election and everyone of the electorate had a chance to vote for the candidate of his choice.

These considerations lead me to the conclusion that despite the transgression of the law by the returning officer the election in this case had substantially been conducted in accordance with the principles of the law. I also hold that the non-compliance of the law by the returning officer had not affected the result of such election, that is, the success of one candidate over the other.

I therefore determine that the respondent was duly elected and I shall so report to the Election Commission. I shall also report to the Election Commission that no corrupt or illegal practice has been proved to have been committed. (See sections 36 and 37 of the Election Offences Ordinance, 1954).

The petition is dismissed with costs.

Petition dismissed.

Solicitors: *Isahak Hamid & Co.; Wan Mustapha & Co.*

KOO WAH & ANOR. v. WONG YING CHOON & ANOR.
LEE SENG & ANOR. v. SAME

[O.C.J. (MacIntyre J.) January 26, 1965]

[Ipoh — Civil Suits No. 18 and 19 of 1963]

Damages — Negligent driving — Quantum of damages — Damages for loss of expectation of life — Conventional figure — Damages for loss of support — Dependency of parents — Civil Law Ordinance, 1956.

In these cases the claims were for damages arising out of an accident in which two female tappers aged 18 and 21 respectively lost their lives in consequence of being knocked down by a motor vehicle belonging to the first defendant and driven by the second defendant. The actions were brought by their legal representatives for the benefit of their respective estates under the Civil Law Ordinance, 1956 and on behalf of the parents of the deceased. The claims were for (a) loss of support; (b) loss of expectation of life; and (c) funeral expenses. The defendants admitted liability and the only issue at the trial was the quantum of special and general damages.

Held: (1) the sums of $2.713.20 and $1,558.80 should be awarded for loss of support in these two cases respectively. Since the claim under section 8 merges with the claim under section 7 the sum of $3,000 should be awarded as general damages in each case;

(2) the conventional figure of $3,000 for damages for loss of expectation of life in the case of a young adult should be followed unless there is evidence of a substantial fall in the value of currency.